

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT MOROGORO**

**MISCELLANEOUS APPLICATION NO. 17 OF 2019**

**BETWEEN**

**GIBSON W. KACHINGWE ..... APPLICANT**

**VERSUS**

**UNITRANS (T) LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 11/06/2020*

*Date of Ruling: 19/06/2020*

**S.A.N. Wambura, J.**

The applicant **GIBSON W. KACHINGWE**, filed this application seeking the Court's order for extension of time to file a revision of the award issued by Commission for Mediation and Arbitration [herein after to be referred to as CMA] at Morogoro on 05<sup>th</sup> April, 2012 in Labour Dispute No.RF/ CMA/MOR/01/2011.

At the hearing the applicant appeared in person whereas Mr. Danstan Kaijage, learned Counsel appeared for the respondent.

With the leave of this Court, the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

Supporting this application the applicants argued on four factors to the effect that:-

1. The issue of illegality can be raised at any stage of the case relating to termination, he argued that;

a) In respect of reason for termination, that he was assigned a job of high risk of stock taking after reporting from hospital while still on dose. He thus failed to honor the duty assigned which resulted to his termination.

b) The Arbitrator erred in law by determining the matter without considering the factor of sickness.

c) The arbitrator did not comply with the guidelines in endorsing applicant's termination as stated at page 14 paragraph one of the ruling of Hon. Muruke Z.G, J was tainted with illegalities including entering the presence of respondent's advocate on his non- appearance. To support his submissions he cited the case of The **Principal Secretary, Ministry of Defense and National Service v. Devram Valambia** (1991) TRL 387.

2. That the applicant had a prospect of winning, since his termination was just a planned mission. Therefore technicalities is not a best option to be opted in this application as it will bar the hearing of the main case contrary to the objective of law in the process of dispensing justice.
3. That the ends of justice may succeed through hearing and the Court record may be set aside, straight and correct any illegalities.
4. That the applicant has accounted for each day of delay as stated in his affidavit and in accordance with Law of Limitation. That the Court should not consider a single factor in granting extension of time, all factors must be considered by the Court so as to exercise its discretionary power of extending time, citing the case **Mbogo v. Shah** (1968) EA.
5. That he made deliberate effort to finalize the matter and it is improper to limit his application on which illegalities should be raised and at which stage.

He thus prayed for the application to be granted.

Responding to the said grounds, Mr. Danstan Kaijage submitted that:-

1. Extension of time is not an automatic right. For the Court to extend time the applicant is duty bound to disclose sufficient reason as justice requires for the Court to grant extension of time, referring to different cases including the case of **Transport Equipment v. Valambia & Attorney General** [1993] TLR 91.
2. For the Court to exercise such power of extension of time, the applicant should comply with the requirement of the law regarding extension of time. The applicant failed to account for each day of the delay, as he filed his application after seven years, from the date of the CMA's award.
3. The applicant's allegations, that the application which was struck out was not prepared by him lacks legal basis since he was a member of the Trade Union (TPAWU).
4. In respect of the illegality of the award; he argued that the CMA's award was proper since the procedure and reason for termination were fair. Since it was the applicant's first offence and he was under a fixed term contract of three months. Therefore the Arbitrator was

right to award the applicant 3 months compensation, hence no need of revising the award.

5. On the allegation of the ruling of this Court by Hon. Z.G Muruke, J. He argued that the applicant has not been prejudiced by minor mistakes, of names of the parties who appeared before the Court when the ruling was delivered. This is minor error and can be cured. Therefore the Court should direct itself to the solid reason and not a mere allegation or invalid reason raised by the applicant to seek Court's sympathy. To support his argument he referred this Court in the case of **Daphine Parry v. Murray Alexander Carson** (1963) EA 546, the East Africa Court of Appeal at page 548.
6. On the prospect and importance of the case, Mr. Kaijage argued that the applicant has not shown as to how prospect his application is, in relation to the award which was procured based on the available evidence and all parties were accorded an opportunity to fair hearing.

He thus prayed for the application to be dismissed.

I have noted that when filing their submissions, the respondents have raised a preliminary objection to the effect that the applicant's affidavit is incurable defective. However the respondent

did not disclose the non-applicable provisions of law which were cited in this application. I have gone through the record, and have noted that the applicant has cited the proper provisions to move the Court as indicated in the notice of application and chamber summons of the applicant's application. Therefore this Court could not rely on something not disclosed or attached as was held in the case of **Nkwabi P. Mdehwa & Another v. Barrick Gold Mine Buzwagi**, Misc. Appl. No. 366 of 2018.

Now has the applicant adduced sufficient cause to be granted leave to file the revision application out of the prescribed time.

The applicant's prayer is made under Rule 56(1) of GN No. 106 of 2007. The provisions gives power to this Court to extend time. Rule 56(1) of GN No. 106 of 2007 provides as follows:-

*"Rule 56(1) The **court may extend or abridge any period prescribed by these rules on application and on good cause shown**, unless the court is precluded from doing so by any written law."*  
*[Emphasis is mine].*

The above provision shows that the Court has discretion to extend time or period prescribed in the Rules, where the applicant has shown good cause and the delay was not caused or contributed by his act or omission as it was held in the case of **Hamis Mohamed V. Mtumwa Moshi**, Civil Application No. 407/17 of 2019.

In the matter at hand, the applicant has submitted his reasons for extension of time as illegalities, prospects of the application for revision, importance of the case and accounted for each day of delay.

In the submissions, I note that the applicant is challenging the award and the respondent has responded to the same which cannot be so in this application. I will thus not deal with the said issue.

But apart from the fact that they are challenging the award, they have not indicated any illegality in procuring it as was held in the cases of **Lyamuya Construction Limited Vs. Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2/2010, **Ngao Godwin Losero Vs. Julius Mwarabu**, Civil Application No. 10 of 2015 (CA) AR. (unreported) and **Finca (T) Limited & Another Vs. Boniface Mwalukisa**, Civil Application No. 589/12 of 2018 (unreported).


Stating illegality alone as a ground for extension of time as held in the cases of **Principal Secretary, Ministry of Defense and National Service Vs. Devram Valambhia** [1992] TLR 185, **VIP Engineering and Marketing Ltd & 2 Others Vs. Citibank Tanzania Limited**, consolidated Civil Reference No. 6, 7 and 8 of 2006 CAT (unreported) and **The Registered Trustees of Joy in the Harvest Vs. Hamza Sungura**, Civil Application No. 131 of 2009 CAT (unreported) is not enough if no explanation is adduced.

It is on record that the matter before CMA was finalized on 05<sup>th</sup> April, 2012. The ruling before this Court was delivered on 04<sup>th</sup> April, 2019 and the present matter was filed on 23<sup>rd</sup> September, 2019. Which means there was a delay of five (5) months in filing the present application but the same has not been accounted for contrary to the principle of extension of time which requires one to account for each day of delay as was held in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (Unreported) where the Court stated that:-

*"Delay of even a single day, has be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."*



Therefore the applicant has failed to show good cause to be granted leave to file a revision application out of time. I thus dismiss the application for lack of merit.

S.A.N. Wambura  
  
**JUDGE**  
19/06/2020